

**DETERRENCE AND THE DEATH PENALTY:  
THE CURRENT STATE OF RESEARCH  
AND ITS IMPLICATIONS FOR MONTANA**  
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Chairman Stoker, members of the Committee, thank you for the opportunity to speak today. I am here to speak about the question of deterrence. In my lengthy paper to the Committee I have summarized the deterrence studies, pointed out where the disputes and flaws lie, and addressed the moral implications of using the life of a human being for society's benefit. I will not go into that amount of detail today.

I wish to make the following points:

◆ How deterrent is Montana's death penalty? Of the 13 men sentenced to death in Montana since 1972, four volunteered to be executed and two committed suicide.

◆ Deterrence is a utilitarian argument. It proposes that we reduce an individual to the service of the state by killing him for the purpose of discouraging future crime. We can not use a human being—use the life of a human being—in this way until it is proven or until we reach a consensus that future murders will be discouraged as a result of his death, as opposed to his sentence to life in prison without parole.

◆ The jury is still out. Research into the relationship between executions and murder rates have not yet reached a consensus. The most prolific modern author on the topic, Dr. Joanna Shepherd, has concluded, "[T]he results cannot yet offer definitive conclusions about the degree to which capital punishment deters or induces murders in a specific state."

◆ Shepherd has argued that each execution saves 18 lives. In the same study, however, she concluded that, in Montana, each execution caused 15 additional murders.

◆ The other key author is Dr. Isaac Ehrlich, who treated murder and deterrence as a supply/demand model. His methodology has been roundly criticized as flawed. One economist finally concluded, "Almost every feature of Ehrlich's analysis has been questioned or criticized." Both the National Research Council and Nobel Prize Winner Lawrence Klein have discounted Ehrlich's work.

◆ John Donahue and Justin Wolfers have retested most of the modern research, including Dr. Shepherd's work. They conclude that the results one reaches depends on the assumptions one makes about the variables involved in deciding to commit a crime. For example, Shepherd tried to control for over fifty variables, including such things as gun ownership, political views, demographics, socio-economic conditions. Donahue and Wolfers proved that if you tweak any of these assumptions in a rational way, you observe massive changes in the results: executions no longer save lives, they cost lives, and vice versa.

◆ Donahue and Wolfers proposed a different model—that used by epidemiologists. If murder is the illness and the death penalty is the cure, then we should be able to compare groups who use the cure—death penalty states—with groups that do not—states that lack the death penalty. They discovered that the murder rates in both groups change in the same degree and the same way. Their graphs are reproduced at pages 33 and 34 of my long work.

◆ Those econometric studies that find a relationship between executions and murder rates have also concluded that a threshold number of executions, about one every other year, is necessary to achieve a positive relationship. This means that we have to execute many more prisoners than we do now, which means that we would execute prisoners who, previously, we did not consider to be eligible for the death penalty.

# Montana State Legislature

2009 Session

## **Exhibit** 25

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EXHIBIT 25  
DATE 3/25/09  
SB 236

**THE HISTORY OF CAPITAL PUNISHMENT  
AND  
THE MORAL, ETHICAL, AND PHILOSOPHICAL ISSUES  
SURROUNDING IT.**

TESTIMONY OF JEFFREY T. RENZ  
SCHOOL OF LAW  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
IN CONNECTION WITH SENATE BILL 236

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*I write to offer a comprehensive summary of the history of capital punishment, the moral and ethical questions raised by capital punishment, and the current debate about its effectiveness. I apologize for the length of this memo. It is necessarily long because it reflects two years of study and thought and writing.*

*I begin with what I now consider to be the most significant argument in opposition to execution. Then, because this view leads to the moral and ethical justifications for capital punishment, I review the history of capital punishment in Christendom, which is the source of those justifications. In the third section I review and discuss the moral and ethical justifications for capital punishment: eye-for-eye, retribution, general deterrence, and specific deterrence or self-defense. Finally I will address a key objection—the execution of innocent defendants.*

***I. The Primary Opposition View:  
The Death Penalty Denies an Offender the Opportunity for  
Repentance and Redemption***

*We all have our idea of repentance. By repentance I mean the criminal's contrition and absolution. By redemption, I mean those of the criminal's acts and obligations that follow repentance that are necessary to expiate—to provide satisfaction to God for—one's sin.<sup>1</sup>*

*The Gospels are filled with messages of repentance and redemption. We are told, for example, that "there will be more joy in heaven over one sinner who repents than over ninety-nine righteous persons who need no*

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<sup>1</sup>*"By this a man is entirely freed from the guilt of punishment when he pays the penalty which is owed; further the weakness of the natural good is cured when a man abstains from bad things and accustoms himself to good ones: by subjecting his spirit to God in prayer, or by taming his flesh by fasting to make it subject to the spirit, and in external things by uniting himself by giving alms to the neighbors from whom his fault had separated him." Thomas Aquinas, Summa Contra Gentiles, Book Four, Ch. 72:14.*